

* * *

Defendant.

ORDER

In considering a motion for judgment of acquittal under Rule 29(c) of the Federal Rules of Criminal Procedure, the Court must determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Hursh*, 217 F. 3d. 761, 767 (9th Cir. 2000). In making this determination, the Court must view the evidence in the light most favorable to Plaintiff United States. *United States v. Dreitzler*, 577 F. 2d. 539, 545 (9th Cir. 1978).

1 In evaluating Defendant Kaplan's Motion for a New Trial under Rule 33 of the
2 Federal Rules of Criminal Procedure, the Court must consider whether the evidence
3 preponderates heavily against the verdict so as to warrant a new trial in the interests of
4 justice. *United States v. Pimental*, 654 F. 2d. 538 (9th Cir. 1981).

5 In support of his Motion for Judgment of Acquittal, Defendant Kaplan contends
6 the evidence at trial was insufficient to support the jury's verdict of guilty on Count One in
7 three respects. First, Defendant Kaplan argues that the evidence was not sufficient as a
8 matter of law to establish that Dr. Kaplan possessed the specific intent to defraud or mislead
9 in regards to the object of the conspiracy. Notwithstanding the competing views of the
10 weight of the evidence offered by Defendant Kaplan and Plaintiff United States in their
11 post-trial briefs, the Court finds that viewing the evidence in the light most favorable to
12 Plaintiff United States the evidence adduced at trial was sufficient to demonstrate that
13 Defendant Kaplan concealed the re-use of transrectal needle guides from his patients, that
14 he acted with the intent to defraud and mislead the general public, federal investigators, and
15 the Medical Board. The jury was properly instructed on the elements of Count One, and the
16 verdict of guilty returned was grounded in sufficient evidence to enable a rational trier of
17 fact to find each of the essential elements of the crime beyond a reasonable doubt.

18 Defendant Kaplan next argues that the evidence adduced at trial was insufficient
19 as a matter of law to establish a conspiracy to commit the crime of adulteration.
20 Defendant's argument in this regard clearly fails. Although Defendant offers a detailed
21 summary of the testimony of nineteen witnesses who testified at trial, the testimony of all
22 witnesses in their entirety, and the physical evidence presented, clearly was sufficient to
23 establish to a reasonable jury beyond a reasonable doubt that Defendant Kaplan was part of
24 a conspiratorial agreement to re-use single use needle guides with knowledge that there was
25 a reasonable probability that upon re-use, even after the cleaning efforts which were made,
26 the needle guides would be contaminated with filth or injurious to health.

Finally, in support of his Motion of Judgment of Acquittal, Defendant Kaplan
argues that the evidence was insufficient as a matter of law to establish that the needle

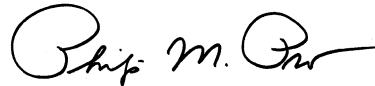
1 guides were “held for sale.” This Court rejected Defendant’s argument in this regard in its
2 Order (Doc. #76, at pp. 4-6) entered on September 5, 2014. None of the evidence presented
3 at trial warrants reconsideration of the Court’s pretrial Order in this regard.

4 As a result, the Court finds Defendant’s Motion for Judgment of Acquittal
5 pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure must be denied.

6 Defendant Kaplan’s Motion for New Trial pursuant to Rule 33 of the Federal
7 Rules of Criminal Procedure must be rejected because the evidence adduced at trial does
8 not preponderate heavily against the verdict of the jury’s return as to Count One. Hence, the
9 interest of justice would not be served by granted the relief requested.

10 **IT IS THEREFORE ORDERED** that Defendant Dr. Michael Stanley Kaplan’s
11 Motion for Judgment of Acquittal or, in the Alternative, for a New Trial (Doc. ##148, 149)
12 are **DENIED**.

13 DATED: December 4, 2014.

14 

15

PHILIP M. PRO
16 United States District Judge
17
18
19
20
21
22
23
24
25
26